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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,141	06/25/2003	Lieven Wulteputte	216398	3956

23460 7590 10/14/2005

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EXAMINER

BUSHEY, CHARLES S

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/606,141

Applicant(s)

WULTEPUTTE, LIEVEN

Examiner

Scott Bushey

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005 and 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schwab et al (Abstract; col. 2, lines 14-16, 32-67; col. 3, lines 34-58; col. 4, lines 5-58; col. 5, lines 28-58; col. 6, lines 19-31; col. 7, lines 4-7, 23-43; col. 8, lines 5-60; col. 9, line 33 through col. 12, line 27).

Applicant should note that the reference clearly controls the sprayers within the GCT by utilizing computer memory and algorithms indicative of various operating conditions. See col. 6, lines 19-31, as well as col. 5, lines 41-58.

Applicant should further note that the last five lines of apparatus claim 1, as well as all of the language of dependent apparatus claims 2-4, recite process limitations that cannot be considered to carry patentable weight, since they do not further limit the apparatus structurally. As is well settled in the prevailing case law, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With respect to instant process claims 5 and 6, applicant should note that the reference clearly teaches adjusting the liquid flow to the nozzles in response to a detected outlet temperature departure from a given set point, and compressed air supply adjustment as a function of the liquid flow rate to the nozzles, such that the efficiency of the device can be optimized, by using the minimum amounts of liquid and air required at the nozzles to achieve precise temperature control of the gas stream being treated. Clearly, the claims, as currently recited do not preclude the temperature difference as envisaged by the reference, since the instant claims only require that "a difference" exists between the detected temperature and the set point temperature for adjustment to occur. In other words, applicant's "difference" is not so defined by the claims as to patentably distinguish from the reference teachings.

### ***Response to Arguments***

3. Applicant's arguments filed August 2, 2005 have been fully considered but they are not persuasive.

With respect to applicant's arguments directed to the Schwab et al reference, as stated above, applicant's "difference" between the measured temperature and the set point temperature is not so defined by the claims as to patentably distinguish from the reference teachings, since applicant's claims read on the detection of a difference of any degree, including those differences which exceed a predetermined amount.

With regard to the equation set forth in instant claim 2, such has not been given patentable weight within the apparatus claim since use of the particular equation by the

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known controller does not further limit the apparatus structurally, but instead amounts to the intended use of a known device, i.e., that as taught by Schwab et al.


**Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey  
Primary Examiner  
Art Unit 1724

  
10-13-05

csb  
10-13-05